



Item 11
(June 24, 2008 meeting).

STAFF DRAFT (X.XX.08)

ADVISORY OPINION 08-XX

Interpretation of T.C.A. § 3-6-301(19) with respect to whether an state official whose registration fee for a conference or educational seminar is waived by an employer of a lobbyist may receive refreshments incidental to the conference or educational seminar if these refreshments are included in the registration fee.

Requestor: Tina G. Miller, General Counsel, Tennessee Department of Financial Institutions.

QUESTIONS

Various trade associations which are also employers of lobbyists ("Employers") hold out-of-state conferences and seminars. These Employers invite Officials in the executive branch¹ and officials in the legislative branch² ("State Officials") to attend. If an Employer waives the registration fee so a State Official can attend the out-of-state conference, and provides meals, refreshments, or snacks to all registered attendees, does the Ethics Reform Act of 2006 ("Act") prohibit the State Official from accepting such meals, refreshments, or snacks?

ANSWERS

The answer depends on whether the registration fee includes the cost of the meals, refreshments, or snacks. The waiver of a registration fee for a conference or educational seminar is not a gift.³ If the fee includes the cost of meals, refreshments, or snacks provided to the registered attendee in connection with a bona fide conference or educational seminar, then such meals, refreshments, or snacks are also not gifts. To the extent that the fee does not include the cost of meals, refreshments, or snacks, however, the Act prohibits the state official from accepting such items, unless the official pays the fair market value for these items.

FACTS

¹ "Official in the executive branch" is a term of art and is defined by Tenn. Code Ann. § 3-6-301(19) as, "the governor, any member of the governor's staff, any member or employee of a state regulatory commission, including, without limitation, directors of the Tennessee Regulatory Authority, or any member or employee of any executive department or agency or other state body in the executive branch."

² "Official in the legislative branch" is a term of art and is defined by Tenn. Code Ann. § 3-6-301(20) as, "any member, member-elect, any staff person or employee of the general assembly or any member of a commission established by and responsible to the general assembly or either house of the general assembly who takes legislative action. "Official in the legislative branch" also includes the secretary of state, treasurer, and comptroller of the treasury and any employee of those offices."

³ Tenn. Code Ann. § 3-6-301(11).

Various trade organizations, which are also Employers, occasionally sponsor educational conferences both in and outside of Tennessee. The sponsoring Employers sometimes invite State Officials with the Department of Financial Institutions (“Department”) to the educational conferences, and will waive the State Officials’ conference registration fees. The conference registration fees include all costs associated with the conference, except travel, lodging, and, depending on the conference, food. The Department pays the travel and lodging for State Officials to attend the educational conferences related to the State Officials’ job. The State Officials attending these Employer-sponsored educational conferences receive no conference benefits other than those provided to all conference attendees.

ANALYSIS

The Act provides, in part, “... an official in the executive branch, or the immediate family of such a candidate or official, may not solicit or accept, directly or indirectly, a gift from an employer of a lobbyist or a lobbyist.”⁴ However, for the prohibition to apply, the person receiving must be a State Official, the person giving must be an Employer or lobbyist, and the thing given or received must fall within the definition of “gift.”

The Department is located within the executive branch. Department employees are thus executive branch employees. Tenn. Code Ann. § 3-6-301(19) defines “official within the executive branch” as, in part, “...any member or employee of any executive department or agency or any other state body within the executive branch.” Thus, as executive branch employees, Department employees are State Officials and subject to the gift prohibition. Further, the general counsel to State Finance informs the Commission that many of the various trade organizations which sponsor the educational conferences in question are Employers. As Employers, the trade organizations would also be subject to the gift prohibition.

Tenn. Code Ann. § 3-6-301(11) defines “gift” as, in part, “any payment, honorarium, subscription, loan, advance, forbearance, rendering, or deposit of money or services, unless consideration of equal or greater value is received” However, the statute specifically provides that, “ ‘Gift’ does not include the waiver of a registration fee for a conference or educational seminar.” As the definition of “gift” explicitly excludes an Employer’s waiver of a conference or educational seminar registration fee, a State Official may accept such a registration fee.

The question then becomes how to determine what is included in “a registration fee for a conference or educational seminar.” In other words, what did the legislature intend a State Official to receive in stating that the definition of “gift” did not include a registration fee for a conference or educational seminar.

Statutory interpretation in Tennessee usually begins with an examination of “the natural and ordinary meaning of the statutory language.”⁵ In this context, the Commission turns to the

⁴ Tenn. Code Ann. § 3-6-305(a).

⁵ *State v. Blackstock*, 19 S.W.3d 200, 210 (Tenn. 2000).

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“commonly accepted meaning” of the words “registration fee” to determine what is normally included in the payment of such.⁶

When one pays a registration fee, one is admitted to the conference for which one has paid. Further, the payment of the registration fee allows one to participate, at no extra charge, in a certain number and type of specified activities. A survey of recent Tennessee state agency conferences and educational seminars lends more clarity as to what activities are normally and usually included in the price of the registration fee.

The Tennessee Arts Commission (“TAC”), for example, recently held the “Talk to Me, Tennessee Conference: A Statewide Conversation about the Arts.”⁷ TAC’s recent conference had a registration fee of forty dollars (\$40.00) per day, and payment of this conference fee allowed an individual to receive the following: a light breakfast, presentations, breaks, panel discussions, workshops, entertainment, and lunch, but not dinner.⁸

Likewise, the Tennessee Department of Environment and Conservation’s recent two (2) day Governor’s Conference on Biofuels had a conference registration fee of two hundred dollars (\$200). Payment of this registration fee allowed an individual to receive the following: receptions, breakfasts, seminars, presentations, lunches, panel discussions, breaks, and one (1) dinner.⁹

Other surveyed state agencies’ conferences and educational seminars were similar in that payment of the registration fee allowed an individual to receive seminars, panel discussions, speakers, presentations, and other educational activities as well as some meals. These meals usually included breakfast, lunch, snacks, and beverages, and occasionally included dinner and entertainment. The meals give State Officials opportunities to socialize with other conference attendees. By paying the travel and lodging costs, the state has recognized the value of the informal contacts developed by such interactions. This practice is of long standing and the General Assembly must have been aware of it when passing the Act.

Thus, it appears refreshments such as receptions, snacks, food, and meals are often provided to conference attendees upon payment of their registration fee.¹⁰ The inclusion of such

interchange of views.” Merriam-Webster Dictionary On-Line. <http://www.merriam-webster.com> (last visited May 19, 2008). While this definition helps one understand what occurs at a conference, it does not at all describe how the discussion and interchange of ideas occur. For example, this definition gives no clarity to where a conference occurs, how long a conference usually lasts, or the method of exchanging ideas. Neither Merriam-Webster nor Dictionary.com provide any definition for “educational seminar.”

⁶ The words utilized in a statute must be given their ordinary, commonly accepted meanings. *Computer Shoppe, Inc. v. State*, 780 S.W.2d 729, 735 (Tenn.App.1989).

⁷ http://www.arts.state.tn.us/tmtt_conference.htm (last visited May 19, 2008).

⁸ Dinner, unlike lunch, did not appear to be included in the conference fee, and it was unclear from the schedule whether the breaks included food. http://www.arts.state.tn.us/tmtt_conference.htm (last visited May 19, 2008).

⁹ <http://www.tennessee.gov/environment/altfuels/conference/agenda.shtml> (last viewed May 19, 2008).

¹⁰ If the meals, snacks, receptions and food were not included as a part of the registration fee, they would not fall under the exception.

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items is sensible and practical. A conference could do a far less effective job of educating its attendees if the attendees were required to leave the conference for breakfast, lunch, snacks, and beverages. Further, the educational and networking benefit of attending a conference is enhanced where the conference provides breakfast, snacks, dinners, entertainment, or other opportunities for conference-goers to meet each other and discuss what they have learned.

It would be absurd to redact from the meaning of “conference or educational seminar” those things both normal and incidental to attendance and included within the registration fee.¹¹ Common sense dictates that the legislature, by stating that conferences and educational seminars are not “gifts,” within the meaning of the Act, intended to include the breakfasts, snacks, and lunches normal and incidental to a conference. In other words, simply because a conference provides some sustenance and light entertainment to its attendees makes it no less a conference.¹²

The above reasoning, however, would not include in the definition of “conference or educational seminar,” items for which an additional fee, over and above the conference registration fee, must be paid. In other words, if an Employer paid a fee over and above the normal registration fee on behalf of a State Official to allow the State Official to attend a golf outing, such a payment would be a “gift” as defined by the Act. As such, the Employer’s payment of the additional fee would be prohibited unless it fell within one of the exceptions to the gift ban.¹³ The Official could, of course, pay the additional fee himself and attend whatever additional activities he wished.

Finally, as the waiver of the registration fee for a conference or educational seminar does not fall within the Act’s definition of “gift,” there is no fifty-one dollar (\$51.00) per person limitation attached to any of the conference meals.¹⁴ Thus, Ms. Miller’s department would no longer need to reimburse the educational conference if the value of a particular meal or reception exceeded fifty-one dollars (\$51.00) per person.

Donald Hall, Chairman
Dianne Ferrell Neal
R. Larry Brown
Thomas J. Garland

¹¹ *Wachovia Bank of North Carolina, N.A. v. Johnson*, 26 S.W.3d 621, 624 (Tenn. Ct. App. 2000)(courts should presume the legislature did not intend an absurd result); [*State ex rel. Maner v. Leech*, 588 S.W.2d 534, 540 \(Tenn. 1979\)](#)(citations omitted)(Courts must construe statutes “with the saving grace of common sense.”).

¹² Just the same, “conference or educational seminar” must include educational seminars, panel discussions, speakers, and the like. An Employer may not circumvent the Act entirely by sending an Official to a “conference or educational seminar” consisting almost entirely of breakfasts, snacks, beverages, lunches, entertainment, dinners, opportunities to socialize, and so forth, with one or two educational events thrown in for good measure.

¹³ Tenn. Code Ann. § 3-6-305.

¹⁴ Even if the conference means were considered a “gift,” the fifty-one dollar (\$51.00) limitation would not necessarily apply. The fifty-one dollar (\$51.00) meal limitation is not absolute. Only meals and events falling under the exceptions to the gift ban found in Tenn. Code Ann. § 3-6-205(b)(8) through (10) require the meal, entertainment, or other activity to fall within a fifty-one dollar (\$51.00) limit.

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